

530
new

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name Martinez, Thomas E.
(Last) (First) (Initial)

Prisoner Number CDCR # V-63638

Institutional Address P.O. Box 8501, Coalinga, CA 93210

FILED

AUG 16 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

THOMAS E. MARTINEZ,
(Enter the full name of plaintiff in this action.)

CV

08

3911

vs.

Case No. _____
(To be provided by the clerk of court)

JAMES A. YATES, Warden, et al.,

**PETITION FOR A WRIT
OF HABEAS CORPUS**

WHA
(PR)

(Enter the full name of respondent(s) or jailor in this action)

E-filing

Read Comments Carefully Before Filing In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

COB-3911 WHA

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose
8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
13 County Superior Court, Oakland):

14 Alameda County Superior Court

15 Court

Location

16 (b) Case number, if known CH34617.

17 (c) Date and terms of sentence Nov. 30, 2004, 56 years to life.

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
19 parole or probation, etc.) Yes X No

20 Where?

21 Name of Institution: Pleasant Valley State Prison.

22 Address: P.O. Box 8501, Coalinga, CA 93210.

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
25 challenging more than one sentence, you should file a different petition for each sentence.)

26 PC §§: 261(a)(2), 288a(c)(2), 12022.3(a), 667.61(e)(4)&(5).

3. Did you have any of the following?

Arraignment: Yes X No

Preliminary Hearing: Yes X No

Motion to Suppress: Yes No X

4. How did you plead?

Guilty Not Guilty X Nolo Contendere

Any other plea (specify) N/A

5. If you went to trial, what kind of trial did you have?

Jury X Judge alone Judge alone on a transcript

6. Did you testify at your trial? Yes No X

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes X No

(b) Preliminary hearing Yes X No

(c) Time of plea Yes X No

(d) Trial Yes X No

(e) Sentencing Yes X No

(f) Appeal Yes X No

(g) Other post-conviction proceeding Yes No X

8. Did you appeal your conviction? Yes X No

(a) If you did, to what court(s) did you appeal?

Court of Appeal. Yes X No

Year: 2006 Result: Judgment affirmed.

Supreme Court of California Yes X No

Year: 2007 Result: Petition for review denied.

Any other court Yes No X

Year: N/A Result: N/A

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes _____ No X

(c) Was there an opinion? Yes X No _____

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes _____ No X

If you did, give the name of the court and the result:

N/A

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes X No _____

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: California Supreme Court.

Type of Proceeding: Petition for writ of habeas corpus.

Grounds raised (Be brief but specific):

a. Counsel failed to adequately advise on a plea bargain.

b. _____

c. _____

d. _____

Result: Pending. Date of Result: N/A

II. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

1 a. _____

2 b. _____

3 c. _____

4 d. _____

5 Result: _____ Date of Result: _____

6 III. Name of Court: _____

7 Type of Proceeding: _____

8 Grounds raised (Be brief but specific):

9 a. _____

10 b. _____

11 c. _____

12 d. _____

13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____

18 b. _____

19 c. _____

20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes X No _____

24 Name and location of court: California Supreme Court.

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to

27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Prosecutor excluded qualified jurors on the basis of race.

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7 Supporting Facts: See Additional Sheet 6(a).

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11 Claim Two: Trial counsel rendered ineffective assistance of counsel
12 by failing to properly advise Petitioner on an offered plea bargain.

13 Supporting Facts: See Additional Sheet 6(a).

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17 Claim Three: The trial court erroneously admitted prejudicial hearsay
18 statements.

19 Supporting Facts: See Additional Sheet 6(a).

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23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 N/A

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27

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Additional Sheets To Petition For Writ Of Habeas Corpus

CLAIM ONE: The Prosecutor excluded qualified jurors on the basis of race, in violation of Petitioner's Sixth and Fourteenth Amendment right to a fair trial.

SUPPORTING FACTS:

The prosecutor in Petitioner's case challenged every Black woman juror who was called to the jury box. These jurors would have been excellent, even pro-prosecution jurors. The trial court erred as well by providing the prosecution with reasons for challenging one of the jurors and failing to grant Petitioner's motions to stop the discriminatory challenges.

During voir dire, Petitioner made two motions pursuant to People v. Wheeler, 22 Cal.3d 258, 265 (1978) and Batson v. Kentucky, 476 U.S. 79, 96 (1986). The first motion was made after the prosecutor challenged two Black women, Cheryl Ellis and Marilyn Major. On the first motion, the court found an inference of discrimination and a prima facie case. (ART 571.)

Petitioner made his second motion after the prosecutor challenged another black woman, Alice Watson. (ART 881, 882.) This challenge by the prosecutor removed every Black woman from the jury. (ART 882.) The court again found a prima facie case of discrimination. (ART 883.)

After Petitioner made his first Batson motion, the trial court speculated about possible reasons the prosecutor may have harbored for the challenge. (ART 571.) This error was fatal to a determination of whether discrimination occurred because the prosecutor never stated his The combined effect of these errors violated Petitioner's Fourteenth Amendment right to a jury drawn from a cross section of the residents of his county of residence, many of whom are Black.

The Prosecutor's Stated Reasons For His Challenges Were Not Related To The Case And Were Not Genuine

Cheryl Ellis

The prosecutor challenged Cheryl Ellis, juror number 3. (ART 491.) She was a 49 year old Black woman and a Baptist. (ACT 955, ACT 956.) She repeatedly stated that she could be impartial to both sides. (ART 362, 434, 435, 436.) She would judge the defendant's testimony equally with that of other witnesses, and base her decision on the law and the facts. (ACT 960.) She had heard nothing about the case. (ACT 962.)

The court speculated that the prosecutor might challenge Ellis because she thought she and her daughter had been mistreated by police because of their race. (ART 571.) However, this was incorrect. Actually, over thirty years prior she had blamed a witness, not the police, for a misidentification, and it had nothing to do with the district attorney. (ART 363, 432, 433.) She repeatedly stated she was not biased against police, and had actually relied on them to get a restraining order. (ART 364, 365, 410.)

In light of the information she gave during voir dire, the court's speculation was not supported.

Marilyn Major

The prosecutor entered his sixth challenge against Marilyn Major. (ART 567.) She was a 41 year old Black woman. (ACT 1090.) The prosecutor stated that he challenged Major because she saw police treating people in a way she did not agree with. (ART 573.) She stated she and her friends had negative experiences with police. (ART 573, 574.) She thought that police stereotype people. (ART 574.) The prosecutor alleged she had a deeply imbedded bias against police and the he would be presenting police witnesses. (ART 574, 575.)

The record does not support the prosecutor's allegations. Major stated repeatedly that she had no problems with law enforcement witnesses. (ART 483.) She state she had no bias against law enforcement that would make it difficult for her to evaluate police witnesses fairly. (ART 452.) She would be fair and impartial. (ART 451.)

Alice Watson

After the prosecutor challenged another Black woman, Alice Watson, Petitioner made another Batson motion. (ART 881, 882.) The court again found an inference of discrimination had been raised and that a prima facie case had been shown. (ART 883.)

The prosecutor gave five reasons for his challenge of Watson:

(1) Watson had worked in a labor law office for years and he had a problem with people in labor law because it is controversial and labor lawyers are fierce advocates, unrelenting in their views (ART 885);

(2) Watson volunteered at Delancey Street, where she lived with hundreds of felons, and this he felt showed an unspecified "strong belief" (ART 886);

(3) Watson's work interviewing worker's comp complainants showed a fiercely adversarial position (ART 886);

(4) the prosecutor did not believe Watson's answers regarding her attitudes about drugs (ART 887);

(5) finally, the prosecutor took offense to Watson's reply when he inquired further into a medical procedure she was having (ART 887).

Each of the prosecutor's stated reasons were baseless and unsupported. Petitioner argued against the prosecutor's five reasons:

(1) Watson was not a lawyer, and never was one. (ART 888, 889.) She showed no signs of being unrelenting. She would follow the jury instructions whether she agreed with them or not. (ACT 418.) She would base her decisions on the evidence and deliberate with the other jurors. (ACT 421.)

(2) Watson's experience at Delancey Street was two decades old, and

she learned that those she served there were responsible for their own actions, and that drug addiction was no excuse for bad behavior. (ART 828, 829, 833, 834.)

(3) Watson was not an advocate for worker's comp complainants, as the prosecution said, she was merely an interviewer and a secretary. (ART 889.)

(4) The prosecutor gave no reasons for not believing Watson's stated attitudes about drugs, and none appear in the record. The prosecutor credited her other answers, and gave no basis for his disbelief.

(5) Watson did not want to talk about a sensitive medical procedure she feared, and it had nothing to do with the prosecutor or the case. (ART 891, 892.)

The Prosecutor Did Not Challenge Non-Black Women With The Same Characteristics As Ellis, Major and Watson

The prosecutor stated that one of the reasons for challenging juror Major was her bias against police. (ART 574, 575.)

However, jurors Woolley and Stanford had negative views of the police but were not challenged at that time. (ART 576.) In addition, Stanford opposed three strikes sentences for non-violent offenders and said he would not follow the law if he disagreed with it. These answers reveal a problem with the criminal justice system, yet the prosecutor did not challenge Stanford.

The prosecutor also stated that Major was emotional. (ART 573.) Yet jurors Vicini, Walters and Mitchell all said they were highly emotional, yet the prosecutor did not challenge them. (ART 576.)

A review of the record shows that the prosecution's peremptory challenges were racially based. This violated Petitioner's Sixth Amendment right to a jury of his peers as held in Batson v. Kentucky, supra, and its progeny. The trial court compounded the violation by giving the prosecutor possible reasons to justify his challenge of juror Ellis, contravening well-established federal and state law governing Batson challenge procedural requirements.

CLAIM TWO: Trial counsel rendered ineffective assistance of counsel by failing to properly advise Petitioner on an offered plea bargain, denying Petitioner his Sixth Amendment right to the effective assistance of counsel.

SUPPORTING FACTS:

On June 21, 2004, Petitioner was informed by his attorney that the Alameda County District Attorney (D.A.) had made a plea bargain offer of 40 years for a plea of guilty on all Counts. At the time of this discussion Petitioner had not been informed by counsel of the scope or content of the discovery counsel had received. Petitioner was never given a copy of the discovery either.

Petitioner's sole knowledge of the evidence against him was counsel's

prior brief discussion regarding the witness statements of the two alleged victims, Angelica Munoz and Jennifer Carvalho. However, there were at least 15 prosecution witnesses that counsel was aware of at that time which Petitioner was never informed about. In addition, there were over 50 hours of tape-recorded phone call conversations between Petitioner and family members in which he made damaging statements.

Had Petitioner been informed and advised about the existence of this evidence, he would have accepted the State's plea bargain offer. Petitioner rejected it because his counsel represented an evidentiary situation in which a future trial would consist solely of the two alleged witnesses' testimony. Had this been the sole evidence against Petitioner, as counsel's omissions portrayed, Petitioner's own testimony and the inconsistent nature of the two victims' testimony could have created a reasonable doubt resulting in an acquittal.

Counsel's failure was objectively unreasonable, as State Bar Rule 3-500, Business & Professions Code §§ 6068(m) & (n), and state and federal case law precedent, clearly require defense counsel to keep his client reasonably informed of important information concerning the case. Furthermore, federal and state case law requires counsel to properly advise his client about the nature and consequences of choosing to accept or reject an offered plea bargain. Thus, counsel's actions fell outside the wide range of reasonably effective assistance guaranteed by the Sixth Amendment.

Prejudice is shown by the large disparity between the 56 years to life term Petitioner received and the 40 years -- with no life term -- Petitioner was offered.

CLAIM THREE: The trial court erroneously admitted prejudicial hearsay statements, in violation of Petitioner's Fifth and Fourteenth Amendment rights to Due Process.

SUPPORTING FACTS:

Over Petitioner's objections, the trial court allowed four prosecution witnesses to testify concerning statements made by one of the victims to them. This testimony was inadmissible hearsay that had a substantial and injurious influence or effect in the jury's verdict determination.

The Four Witnesses' Testimony Was Inadmissible Hearsay

Katherine Solis was a friend of one of the two victims, Angelica Munoz. Munoz talked to Solis after she claimed she was attacked by Petitioner. The prosecutor asked Solis what Munoz had told her, and Petitioner objected on hearsay grounds. (RT 1036.)

Deputy Sheriff Terrence Montigue was asked by the prosecution what Munoz told him. (RT 1060.) Petitioner objected during his testimony on hearsay grounds. (RT 1068, 1069.) The court allowed Montigue to describe in detail what Munoz told him that happened. The court admonished the jury that his statement was not for the truth of the matter. (RT 1060.)

Officer Andrade was allowed to testify over Petitioner's objections

as well. (RT 1164, 1165.) The court again admonished that the testimony was not for the truth of the matter, but to indicate that she made the statements. (RT 1165.)

Deputy David Dickson likewise recounted -- over Petitioner's objections -- every detail of victim Carvalho's report to him. (RT 1196-1198.)

The testimony of Solis, Andrade, Montigue, and Dickson contained the substance of the victim's complaints and included vivid descriptions of the alleged attacks.

The Inadmissible Hearsay Was Prejudicial

The inadmissible hearsay testimony had a substantial and injurious influence or effect in determining the jury's verdict because (1) it bolstered the weak testimony of Munoz, (2) no other witnesses gave fresh complaint testimony, (3) the other evidence in the case was evenly balanced, and (4) the trial court's admonitions and instruction concerning the testimony was insufficient to cure the prejudice.

(1) The inadmissible hearsay greatly enhanced the credibility of Munoz, which was the only issue in the case. Munoz's testimony was ambiguous, and had not been credited by the officers who heard it. The hearsay testimony given by officials displayed none of the ambiguity or confusion Munoz herself displayed.

(2) Except for Munoz, no other witness gave testimony on the charge itself beside the four above who gave the inadmissible hearsay testimony.

(3) The Munoz charges were weak. Munoz was a methamphetamine addict who was paranoid with poor memory when high. (RT 783, 784, 898, 899, 963.) She had sexual interactions with Petitioner in the past. (RT 906, 909.) Her statements about weapons used during the charged act conflicted. (RT 925, 947, 972.) She did not mention any incident to anyone for several months, and was not deemed credible. (RT 1060, 1150, 1168, 1233, 1180, 1182, 1226.)

Moreover, the prosecutor emphasized the reports of officers Montigue and Dickson as if they were substantive proof and argued the reports corroborated Munoz's testimony. (RT 1394-1396.)

(4) The power of the combined testimony of the four witnesses above rendered the court's admonitions ineffective. The jury would have found it difficult not to view their testimony as tending to prove the truth of the underlying charge.

In light of the copious amount of inadmissible hearsay and the prosecutor's reliance upon it during closing argument to support the charged acts, Petitioner's Fifth Amendment right to due process was violated. The combined effect of hearsay had a substantial and injurious influence on the jury's verdict because Munoz's own testimony was weak, she was the sole witness to the offenses she alleged, and the prosecutor used the position of official authority of three of the hearsay witnesses as a primary reason why Munoz's account should be believed.

why Munoz's account should be believed.

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 **Claim 1:** Batson v. Kentucky, 476 U.S. 79 (1986); **Claim 2:** Hill v. Lockhart,
5 **474 U.S. 52 (1985); **Claim 3:** Jammal v. Van de Kamp, 926 F.2d 918, 920 (9th**
6 **Cir. 1991).**

7 Do you have an attorney for this petition? Yes _____ No X

8 If you do, give the name and address of your attorney:

9 N/A

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on August 4, 2008

14 Date

Thomas Martiney
Signature of Petitioner

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16
17
18
19
20 (Rev. 6/02)

Thomas E. Martinez
CDCR # V-63638
Pleasant Valley State Prison
P.O. Box 8501
Coalinga, CA 93210

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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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AUG 12 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
pro

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W. J. J. J. J.



8/15/08